

Decision 05-07-035 July 21, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the City of Mendota for Authority to Construct an At-Grade Pedestrian Crossing Along the Prolongation of 2<sup>nd</sup> Street Across the Tracks of the Union Pacific Railroad Company in the City of Mendota, Fresno County.

Application 04-05-038  
(Filed May 25, 2004;  
Amended May 27, 2005)

**OPINION GRANTING APPLICATION**

**Summary**

This decision grants the application of the City of Mendota (the City) to construct an at-grade pedestrian and bicycle crossing across railroad tracks to take the place of two informal crossings being used daily by up to 300 adults and children. One of the informal crossings will be fenced to prevent access to the tracks. Protests by Union Pacific Railroad Company (Union Pacific) and the San Joaquin Valley Railroad (San Joaquin) were withdrawn after the City's engineers worked with railroad and Commission staff to ensure that the improved crossing will have adequate safety devices and fencing. This proceeding is closed.

**Discussion**

The City filed its application on May 25, 2004 and, following diagnostic review and meetings with Union Pacific, San Joaquin, and the Commission's Rail Crossings Engineering Section of the Consumer Protection and Safety Division, filed an amended application on May 27, 2005. The application is accompanied

by a memorandum of understanding executed by the City, San Joaquin and Union Pacific. The amended application is uncontested.

The City proposes to install the pedestrian-bicycle crossing at 2nd Street between Marie Street and Naples Street in Mendota. The crossing will include a cement concrete sidewalk, swing gates and two standard No. 10 automatic flashing lights. In subsequent correspondence with staff, the City agreed to install Commission Standard No. 8 warning devices with a Standard No. 1-D sign (Pedestrians and Bicycles Only). Chain link fencing will be installed along the west end of the railroad right-of-way to close access to another informal crossing route at 5th Street and direct pedestrians to the improved crossing.

The City estimates that the new crossing will be used each day by up to 300 pedestrians, many of them school children going to and from nearby McCabe Junior High School. The City states that pedestrians have been using the 2nd Street and 5th Street crossings for years, and that closing the 5th Street crossing and installing swing gates and flashing lights at the 2nd Street crossing will enhance public safety.

The City states that it investigated a separation of grades at the crossing but deemed that impracticable and cost prohibitive. The deck of an overhead crossing would be almost 30 feet above top-of-rail, and long ramps required for wheelchair access would increase the travel distance for pedestrians, many of whom would be likely to avoid the structure and continue to cross the tracks as they do now. Moreover, few trains use the line at present. San Joaquin leases the tracks from Union Pacific and operates an average of three freight trains per week on the line. The maximum authorized train speed on the line is 10 miles per hour.

The City states that the project has qualified for funding from the Congestion Management and Air Quality program, which would provide approximately 89% of eligible costs, with local funds providing the remaining amount. Detailed engineering drawings are attached to the application and have been reviewed by the Commission's Rail Crossings Engineering Section, which recommends that the application be granted.

The memorandum of understanding executed by the City and the two railroads provides that the parties will enter into agreements covering the City's acquisition of property rights from Union Pacific. It also requires the City to install and maintain fencing along the perimeter of Union Pacific's right-of-way on both sides of the proposed crossing to channel pedestrians and bicyclists away from the railroad tracks. The City agrees to implement measures to promote rail crossing safety and safety awareness at nearby schools and to monitor the new 2nd Street crossing to ensure that students are abiding by railroad safety rules. The City also pledges that it will not seek authority for any additional rail-highway projects that would produce a net increase in the number of existing grade crossings within city limits.

### **CEQA Review**

The City is the lead agency for this project under the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 *et seq.* On May 13, 2004, the City filed in Fresno County a Notice of Exemption for work at the proposed new crossing. The construction of a pedestrian walkway/bikeway is classified as a minor alteration to land and categorically exempt from CEQA review under § 21084 and CEQA Guideline 15301(c).

The Commission is a CEQA responsible agency, as defined in Pub. Res. Code § 21069, for the project. To comply with CEQA, a responsible

agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project. (CEQA Guidelines §§ 15050, 15096.)

In this case, the lead agency has determined that the project is exempt from CEQA. We are aware of no reason why the determination of exemption for the project is not warranted. We find the Notice of Exemption prepared by the City adequate for our decision-making purposes. Accordingly we also find the project exempt from CEQA.

### **Categorization**

This proceeding was preliminarily categorized as ratesetting on June 9, 2004 by Resolution ALJ 176-3135. We also preliminarily determined that hearings were not necessary. The only protests filed have been withdrawn. Staff recommends that this application be granted. The preliminary determinations are confirmed.

### **Comments on Draft Decision**

This is now an uncontested matter in which the decision grants the relief requested. Pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Notice of the application was published in the Commission Daily Calendar on May 27, 2004.
2. Union Pacific and San Joaquin filed timely protests to the application.

3. Union Pacific and San Joaquin withdrew their protests following execution of a memorandum of understanding with the City in April 2005.

4. This application is uncontested.

5. The proposed new at-grade pedestrian/bicycle walkway crossing over Union Pacific rails will be constructed within the extension of the 2nd Street right-of-way between Marie Street and Naples Street in the City of Mendota.

6. Public convenience, safety, and necessity require the construction of the pedestrian/bicycle walkway rail crossing at the 2nd Street location and the closure through fencing of an informal crossing at 5th Street.

7. The City is the CEQA lead agency for the project.

8. The Commission is a responsible agency for the project under CEQA.

9. The Commission reviewed and considered the City's environmental documentation.

10. On May 13, 2004, the City filed a Notice of Exemption pursuant to CEQA finding that the work proposed for the pedestrian/bicycle walkway is exempt from CEQA.

### **Conclusions of Law**

1. The application is uncontested and a public hearing is not necessary.

2. Public convenience, safety, and necessity require approval of the application, as amended.

3. The Notice of Exemption filed by the City as the documentation required by the CEQA for the project proposed in this application is adequate for our decision-making purposes.

4. We adopt the City's Notice of Exemption finding the proposed project exempt from CEQA.

5. The application should be granted as set forth in the following order.

6. In order to allow construction to proceed expeditiously, this order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. The City of Mendota (the City) is authorized to construct an at-grade pedestrian crossing (CPUC No. 109A-174.1) along the prolongation of 2nd Street across the tracks of Union Pacific Railroad Company in the City of Mendota, Fresno County, as set forth more fully in the amended application and the memorandum of understanding and exhibits that accompany the application.

2. The City shall install two swing gates and two Commission Standard No. 8 warning devices with a Standard No. 1-D sign.

3. The City shall install chain link fencing along the west end of the railroad right-of-way to close access to another informal crossing route at 5th Street and direct pedestrians to the improved crossing.

4. The City, San Joaquin Valley Railroad and Union Pacific Railroad Company shall comply with all applicable Commission General Orders and the Manual on Uniform Traffic Control Devices as amended by the California Supplement.

5. Within 30 days after completion of the work under this order, the City shall submit to the Commission's Rail Crossing Engineering Section of the Consumer Protection and Safety Division a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations).

6. This authorization shall expire if not exercised within two years unless the time is extended.

7. This authorization may be revoked or modified if public convenience, necessity, or safety so require.

8. This application is granted as set forth above.

9. Application 04-05-038 is closed.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
JOHN A. BOHN  
Commissioners